

The Honorable Karen L. Strombom

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MOBILE WORKFORCE, INC., a Delaware corporation,)
Plaintiff,) No. C05-5229 KLS
v.) PRETRIAL ORDER
PACIFIC MEDICAL, INC., a California corporation,)
Defendant.)

I. JURISDICTION

This Court has original subject matter jurisdiction, pursuant to 28 U.S.C. § 1332, because the parties are “citizens of different states” and the matter in controversy exceeds the sum or value of \$75,000.

II. CLAIMS AND DEFENSES

The Plaintiff will pursue the following claims at trial:

1. Breach of contract;
 2. Account stated;
 3. Moneys due and owing;

4. Unjust enrichment; and
5. Quantum meruit.

In addition, the Plaintiff will pursue the following affirmative defenses to Defendant's

Counterclaim:

1. Failure to state a claim for relief;
 2. Offset;
 3. Failure to mitigate damages;
 4. Waiver; and
 5. Estoppel.

The Defendant will pursue the following affirmative defenses at trial:

1. Failure to state a claim for relief;
 2. Failure of conditions precedent;
 3. Offset;
 4. Objection to amounts claimed;
 5. Estoppel; and
 6. Waiver.

The Defendant will pursue the following claims defenses at trial:

1. Breach of contract; and
 2. Breach of written and oral agreements.

III. ADMITTED FACTS

The following facts are admitted by the parties:

1. Plaintiff Mobile Workforce, Inc. (“MWF”) is a Delaware corporation in good standing, with its primary place of business in Port Orchard, Kitsap County, Washington.

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LAW OFFICES OF
KELLER ROHRBACK L.L.P.
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TELEPHONE: (206) 623-1900
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1 2. MWF is the provider of software products to help companies provide their mobile
2 sales forces with real-time distribution chain management capabilities.

3 3. Defendant Pacific Medical, Inc. ("Pacific Medical") is a California corporation with
4 its primary place of business at 1264 Stealth Street, Livermore, California 94551.

5 4. Pacific Medical is in the business of selling medical supplies and was a customer of
6 MWF.

7 5. In early 2003, Pacific Medical negotiated with MWF regarding the purchase of
8 hardware and software.

9 6. On March 26, 2003, MWF and Pacific Medical entered into an End User License
10 Agreement.

11 7. MWF presented Pacific Medical with a Quotation containing a price list dated May
12 14, 2003.

13 8. On August 5, 2003, Paul Wiese of Pacific Medical e-mailed David Weir or MWF,
14 describing the hardware and 12 features that Pacific Medical required.

15 9. By the end of August 2003, Pacific Medical had four representatives who had been
16 trained on, and were utilizing, the workSmart! computer software and associated hardware on a
17 trial basis.

18 10. Four handheld units were provided to Pacific Medical as hardware in the summer of
19 2003 for this trial basis.

20 11. On or about December 16, 2003, David Weir, on behalf of MWF, signed a "Purchase
21 Agreement for Hardware, with Software" provided by Pacific Medical. The document was not
22 signed nor subsequently signed by Pacific Medical.

1 12. WorkSmart! software and associated hardware was delivered to Pacific Medical in
2 several shipments. The bulk of the hardware, approximately 14 handheld units, was delivered to
3 Pacific Medical by early February 2004.

4 13. MWF billed Pacific Medical \$177,153.70 by invoice no. 10043, dated December 10,
5 2003.

6 14. A payment totaling \$111,748.03 was made on behalf of Pacific Medical.

7 15. MWF also invoiced Pacific Medical \$19,650.03 for use of and access to the
8 workSmart! application service provider system.

9 The Plaintiff contends as follows:

10 1. In March and April 2003, MWF and Pacific Medical entered into an End User
11 License Agreement (“EULA”) subject to agreed-upon terms and conditions governing Pacific
12 Medical’s use of the MWF workSmart! software and associated hardware, including handheld
13 computers, by Pacific Medical’s sales representatives. Those documents, along with a series of
14 e-mail communications between the parties, establish the price, quantity, and time of delivery of
15 the goods.

16 2. The parties agreed on pricing set forth in MWF’s system quotation letter dated April
17 2, 2003.

18 3. The EULA incorporates by reference MWF’s Terms and Conditions, which provide
19 for an award of attorney’s fees and costs to the prevailing party in this action.

20 4. The software and associated hardware were delivered to Pacific Medical in several
21 shipments and Pacific Medical does not dispute their receipt.

22 5. MWF completed the training of the Pacific Medical sales team in the workSmart!
23 system in March 2004, by which time the system was fully operational.

1 6. MWF invoiced Pacific Medical \$177,153.70 for the products and Pacific Medical
 2 never contested its accuracy. Payment was made on behalf of Pacific Medical totaling
 3 \$111,748.03, leaving a balance in the amount of \$65,405.67. Despite due demand, the balance
 4 remains unpaid.

5 7. MWF also agreed to allow Pacific Medical use of and access to the workSmart!
 6 application service provider system at MWF offices for consideration, payable monthly, in the
 7 amount of \$1,374.25 per month. Pacific Medical availed itself of this service and was invoiced
 8 for such fees in the total amount of \$19,650.03 which, despite due demand, remains unpaid and
 9 due and owing.

10 8. In accordance with the parties' agreements, Pacific Medical has enjoyed the benefit
 11 of using the workSmart! system, and used it commercially into 2005. As a result, it is liable to
 12 MWF for breach of contract; account stated; for moneys due and owing; for unjust enrichment;
 13 and for quantum meruit.

14 9. MWF denies that the proposed "Hardware (with Software) License and Purchase
 15 Agreement" dated December 16, 2003 was ever agreed to and denies that it supersedes the
 16 earlier EULA and that it is the operative agreement governing Pacific Medical's purchases from
 17 MWF at issue in this action.

18 The Defendant contends as follows:

19 1. In or about March 2003, Pacific Medical entered into negotiations with MWF for the
 20 purchase of handheld computer hardware and sales inventory and distribution computer
 21 software.

22 2. The primary purpose of this system was the ability to track Pacific Medical's sales
 23 and inventory, including on the handheld units of Pacific Medical's sales force in the field.

1 3. In the summer of 2003, there were extensive discussions between Pacific Medical and
2 MWF regarding what capabilities and features Pacific Medical needed in an inventory system.
3 Key features required were memorialized in various e-mails, including one sent on August 4,
4 2003.

5 4. On December 16, 2003, the parties entered into a comprehensive "Purchase
6 Agreement for Hardware, with Software" which described their agreement and specifically
7 superseded the earlier licensing agreement and invoice.

8 5. The EULA does not apply to the sale of software and hardware to Pacific Medical.
9 By its own terms, it is limited to "the terms and conditions for the use by you ["Pacific Medical"]
10 of Mobile Workforce's workSmart!™ software."

11 6. The EULA does not provide for an award of attorney's fees and costs to the
12 prevailing party in this action.

13 7. The Purchase Agreement provides for an award of reasonable attorney's fees and
14 costs to the prevailing party in this action.

15 8. Pacific Medical disputes that MWF provided software with the capability it agreed to
16 provide on a timely basis.

17 9. Pacific Medical contests MWF's billing of \$177,153.70 since it failed to provide the
18 product agreed to on a timely basis.

19 10. While Pacific Medical made some limited use of the MWF software, it was not the
20 system it contracted for.

21 **IV. ISSUES OF LAW**

22 The Plaintiff believes that the following issues of law should be determined by the Court:
23

1 1. Is Pacific Medical liable to MWF for breach of contract under the terms of the EULA,
2 MWF's quotation, and the parties' subsequent e-mails communications and course of
3 performance?

4 2. Is Pacific Medical liable to MWF for the unpaid balance of invoices under the
5 doctrine of account stated?

6 3. Is Pacific Medical liable to MWF for the unpaid balance of invoices under the
7 doctrine of moneys due and owing?

8 4. Is Pacific Medical liable to MWF for the unpaid balance of invoices under the
9 doctrine of unjust enrichment?

10 5. Is Pacific Medical liable to MWF for the unpaid balance of invoices under the
11 doctrine of quantum meruit?

12 6. Is Pacific Medical liable to MWF for its reasonable attorneys' fees and costs incurred
13 in connection with this action?

14 The Defendant believes that the following issues of law should be determined by the
15 Court:

16 1. Is MWF liable to Pacific Medical for a breach of contract under the terms of the
17 Purchase Agreement, oral agreements, and the parties' prior and subsequent e-mail
18 communications?

19 2. Has MWF failed to state a claim for relief under the EULA since it is limited to the
20 "terms and conditions for the use" of software?

21 3. Is MWF liable to Pacific Medical for its reasonable attorney's fees and costs incurred
22 in connection with this action?

4. Is MWF liable to Pacific Medical for consequential damages as a result of the untimely delivery?

V. EXPERT WITNESSES

The name(s) and addresses of the expert witness(es) to be used by each party at the trial and the issues upon which each will testify is:

On behalf of the Plaintiff:

a. Shelly Arnold

V.P. Operations,
Mobile Workforce, Inc.
2501 Mile Hill Drive, Suite A-104
P. O. Box 633
Port Orchard, WA 98366-0633

Ms. Arnold will testify regarding all issues in dispute as a fact witness. In addition, she will testify as an expert witness regarding the functionality of the workSmart! system, and specifically, each of the aspects that Pacific Medical contends were not fully functional, and regarding upgrades to the software.

b. David G. Weir

President, CEO
Mobile Workforce, Inc.
2501 Mile Hill Drive, Suite A-104
P. O. Box 633
Port Orchard, WA 98366-0633

Mr. Weir will testify regarding all issues in dispute as a fact witness. In addition, he will testify as an expert witness regarding the functionality of the workSmart! system, and specifically, each of the aspects that Pacific Medical contends were not fully functional, and regarding upgrades to the software. He will also testify as a rebuttal witness to rebut the testimony of Pacific Medical's expert witness, as set forth in his rebuttal report.

1 On behalf of the Defendant:

2 a. William R. Beardsley

3 William R. Beardsley Consulting
4 784 Manor Way
5 Los Altos, CA 94204

6 Mr. Beardsley will testify as to the areas covered in his expert report (a copy of which is
7 attached hereto as Exhibit "A"), including, but not limited to, the workSmart! System provided
8 to Pacific Medical and the implementation of the features agreed to between Pacific Medical and
9 MWF.

10 **VI. OTHER WITNESSES**

11 The names and addresses of witnesses, other than experts, to be used by each party at the
12 time of trial and the general nature of the testimony of each are as follows:
13

14 On behalf of the Plaintiff:

15 1. David G. Weir

16 President and CEO
17 Mobile Workforce, Inc.
18 2501 Mile Hill Drive, Suite A-104
P. O. Box 633
Port Orchard, WA 98366-0633

19 Subject: Mr. Weir will testify regarding all issues in dispute including the negotiation of
20 the parties' agreement, the software and associated hardware, delivery of the product and
21 services, meetings and communications with Pacific Medical representatives regarding the
22 software and associated hardware, invoices issued to Pacific Medical and its partial payment, the
23 functionality of the workSmart! system, upgrades to the software, and MWF's damages.
24

1 2. Shelly Arnold

2 V.P., Operations
3 Mobile Workforce, Inc.
4 2501 Mile Hill Drive, Suite A-104
5 P. O. Box 633
6 Port Orchard, WA 98366-0633

7 Subject: Ms. Arnold will testify regarding all issues in dispute including the negotiation
8 of the parties' agreement, the software and associated hardware, delivery of the product and
9 services, meetings and communications with Pacific Medical representatives regarding the
10 software and associated hardware, invoices issued to Pacific Medical and its partial payment, the
11 functionality of the workSmart! system, upgrades to the software, and MWF's damages.

12 3. Tess Krimsky

13 806 Saddleback Circle
14 Livermore, CA 9451

15 Subject: Ms. Krimsky was, until February 2005, employed by Pacific Medical as a
16 surgical coordinator. She will testify through her deposition transcript regarding Pacific
17 Medical's daily use and operation of the workSmart! system.

18 4. Jerry Doll

19 1264 Stealth Street
20 Livermore, CA 94551

21 Subject: Mr. Doll is a sales representative for Pacific Medical and may be called to
22 testify through his deposition transcript of his use of the workSmart! system.

1 5. Brent Santos

2 1264 Stealth Street
3 Livermore, CA 94551

4 Subject: Mr. Santos is a sales representative for Pacific Medical and may be called to
5 testify through his deposition transcript of his use of the workSmart! system.

6 6. Jamie DeCoite

7 1264 Stealth Street
8 Livermore, CA 94551

9 Subject: Mr. DeCoite is a sales representative for Pacific Medical and may be called to
10 testify through his deposition transcript of his use of the workSmart! system.

11 7. Rich Rollins

12 1264 Stealth Street
13 Livermore, CA 94551

14 Subject: Mr. Rollins is a sales representative for Pacific Medical and may be called to
15 testify through his deposition transcript of his use of the workSmart! system.

16 8. David Roderick

17 1264 Stealth Street
18 Livermore, CA 94551

19 Subject: Mr. Roderick is a sales representative for Pacific Medical and may be called to
20 testify through his deposition transcript of his use of the workSmart! system.

21 9. Tim Flannigan

22 1264 Stealth Street
23 Livermore, CA 94551

24 Subject: Mr. Flannigan is a sales representative for Pacific Medical and may be called to
25 testify through his deposition transcript of his use of the workSmart! system.

1 10. Scott Freeman

2 155 East Campbell Avenue, #145
3 Campbell, CA 95008

4 Subject: Mr. Freeman is a sales representative for Pacific Medical and may be called to
5 testify through his deposition transcript of his use of the workSmart! system.

6 11. Brian Richert

7 820 Park Row, Suite 1
8 Salinas, CA 93901

9 Subject: Mr. Richert is a sales representative for Pacific Medical and may be called to
10 testify through his deposition transcript of his use of the workSmart! system.

11 12. Dave Gamroth

12 9570 S.W. Barbur Boulevard, Suite 209
13 Portland, OR

14 Subject: Mr. Gamroth is a sales representative for Pacific Medical and will be called to
15 testify through his deposition transcript of his use of the workSmart! system.

16 On behalf of the Defendant:

17 Defendant reserves the right to call and examine all witnesses listed by plaintiff.

18 1. Jeff Leonard

19 CFO
20 Pacific Medical, Inc.
21 1264 Stealth Street
22 Livermore, CA 94551
23 (800) 726-9180

24 Subject: Mr. Leonard will testify regarding Pacific Medical's counterclaims against
25 MWF, the agreements between MWF and Pacific Medical, and to damages. Mr. Leonard will
26 also testify consistent with the testimony given in his deposition taken April 4, 2006.

1 2. Paul Wiese

2 V.P. of Sales
3 Pacific Medical, Inc.
4 1264 Stealth Street
5 Livermore, CA 94551
6 (800) 726-9180

7 Subject: Mr. Wiese will testify regarding all issues in dispute, including Pacific
8 Medical's counterclaims against MWF, the agreements between MWF and Pacific Medical, and
9 to damages. He will testify to the parties' negotiations, the specifications for the product agreed
10 to by the parties, and the product promised in a timely manner. Mr. Wiese will also testify
11 consistent with the testimony given in his deposition taken April 4, 2006.

12 3. John Petlansky

13 Pacific Medical, Inc.
14 1264 Stealth Street
15 Livermore, CA 94551
16 (800) 726-9180

17 Subject: Mr. Petlansky will testify regarding Pacific Medical's counterclaims against
18 MWF, the agreements between MWF and Pacific Medical, and to damages. Mr. Petlansky will
19 also testify consistent with the testimony given in his deposition taken April 4, 2006.

20 4. David G. Weir

21 President and CEO
22 Mobile Workforce, Inc.
23 2501 Mile Hill Drive, Suite A-104
24 P. O. Box 633
25 Port Orchard, WA 98366-0633

26 Subject: Mr. Weir will testify as to areas covered in his deposition taken March 2, 2006.

1 5. Shelly Arnold

2 V.P., Operations
 3 Mobile Workforce, Inc.
 4 2501 Mile Hill Drive, Suite A-104
 5 P. O. Box 633
 6 Port Orchard, WA 98366-0633

7 Subject: Ms. Arnold will testify as to areas covered in her deposition taken March 2,
 8 2006.

9 6. Miten Marfatia

10 Evolveware
 11 3375 Scott Boulevard, Bldg. 330
 12 Santa Clara, CA 95054

13 Subject: Mr. Marfatia will testify regarding his knowledge of the Mobile Workforce
 14 system delivered to Pacific Medical.

15 7. Dave Gamroth
 16 9570 S.W. Barbur Boulevard, Suite 209
 17 Portland, OR

18 Subject: Mr. Gamroth will testify to the use of the Mobile Workforce workSmart!
 19 product.

20 **VII. EXHIBITS**

Exh. #	Description	Authenticity		Admissibility	
		Stipulation	Objection	Stipulation	Objection
1	March 26, 2003 End-User License Agreement MW 366-69	●		●	
2	Mobile Workforce Invoice No. 10043 (MW 0061)	●		●	
3	Quotation dated April 2, 2003, MW 0067-71	●		●	
4	Delivery Note MW 0065	●		●	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26	5 Mobile Workforce Invoices MW 0040-64, 0081 6 Deposition Ex. 46 Summary of workSmart! Release History MW 0571-72 7 Pages 1-10 of PacMed Inventory Received Chart, Mar. 1, 2004 to Dec. 1, 2004 Bates Nos. MW 0573-82 8 Email from Paul Wiese to David Weir dated August 5, 2003 (PMI 000247- PMI000248) 9 Email from David Weir to Paul Wiese and Jeff Leonard dated August 6, 2003 (MW0075-MW0077) 10 Email from David Weir to Paul Wiese dated August 22, 2003 (PMI 000242- PMI 000243) 11 Email from David Weir to Paul Wiese dated August 22, 2003 (PMI 000246) 12 Email from David Weir to Jeff Leonard and Paul Wiese dated September 2, 2003 (PMI 000237) 13 Email from David Weir to Paul Wiese dated October 14, 2003 (PMI 000232- PMI 000234) 14 Hardware (with Software) License and Purchase Agreement dated 12/16/03 (PMI 000001-PMI 000026) 15 Email from David Weir to Jeff Leonard and Paul Wiese dated November 5, 2003 (PMI 000178-PMI 000185)		Lack of foundation Lack of foundation Lack of foundation Relevance		Lack of foundation; relevance Lack of foundation; relevance Relevance
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1	16	Email from Patricio Cano to David Weir dated December 16, 2003 (MW0089-MW0110)	●		●	
2	17	Co-Marketing Agreement for the Total Distributor Management System (PMI 000027-PMI 000036)	●			Relevance
3	18	Email from David Weir to Jeff Leonard dated January 21, 2004 (MW0003-MW0004)	●		●	
4	19	Email from Dave Weir to Paul Wiese dated January 22, 2004 (MW0019)	●		●	
5	20	Email from Jeff Leonard to David Weir dated January 22, 2004 (PMI 000168-PMI 000169)	●		●	
6	21	Email from David Weir to Paul Wiese dated February 2, 2004 (MW0017-MW0018)	●		●	
7	22	Email from David Weir to Jeff Leonard dated February 4, 2004 (MW0005-MW0007)	●		●	
8	23	Email from David Weir to Paul Wiese dated February 10, 2004 (MW0024-MW0029)	●		●	
9	24	Email from David Weir to Paul Wiese dated February 10, 2004 (MW0010-MW0016)	●		●	
10	25	Email from David Weir to Paul Wiese dated April 8, 2004 (MW0020-MW0023)	●		●	
11	26	Email from Paul Wiese to David Weir dated April 8, 2004 (PMI 000083-PMI 000087)	●		●	
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1	27	Email from David Weir to John Petlansky dated April 27, 2004 (MW0084-MW0087)	●		●	
2	28	Email from Paul Wiese to David Weir dated May 12, 2004 (PMI 000095-PMI 000096)	●		●	
3	29	Pacific Medical Meeting Minutes for June 2, 2004 meeting (MW0036-MW0037)	●		●	
4	30	Email from Dreamhost.com to Shelly Arnold re Release Announcement dated December 22, 2004 (MW0567-MW0568)	●		●	
5	31	Email from Dreamhost.com to Shelly Arnold dated January 25, 2005 (MW0569-MW0570)	●		●	
6	32	Mobile Workforce, Inc. A/R Aging Detail dated February 17, 2005 and Invoices to Pacific Medical (Deposition Ex 29)	●		●	
7	33	Check from New Tech Leasing Company LLC to Mobile Workforce dated December 12, 2003 in the amount of \$111,748.03	●			Relevance
8	34	Email from David Weir to Jeff Leonard and Paul Wiese dated February 25, 2004 (PMI 000134)	●		●	
9	35	Email from David Weir to Paul Wiese dated February 12, 2004 (PMI 000137-PMI 000139)	●		●	
10	36	Email from David Weir to Jeff Leonard dated April 10, 2003 (PMI 000106-PMI 000107)	●		●	

1	37	Email from David Weir to Jeff Leonard dated November 5, 2003 (PMI 000173-PMI 000177)	●		●	
2	38	Email from David Weir to Paul Wiese dated May 25, 2004 (MW0008-MW0009)	●		●	
3	39	Resume for Shelly R. Arnold (Deposition Exhibit 38)	●		●	
4	40	Email from Shelly Arnold to announcements@list-mobile-workforce.com dated July 14, 2003 (MW0555-MW056)	●		●	
5	41	Spreadsheets of Web Features and PacMed Sales and workSmart! Release History (MW0571-MW0572)		Lack of foundation; relevance		Lack of foundation; relevance
6	42	Email from David Weir to Jeff Leonard dated September 2, 2003 (PMI 000237)	●		●	
7	43	Email from Dreamhost.com to Shelly Arnold dated December 5, 2003 (MW0563-MW0564)	●		●	
8	44	Email from Dreamhost.com to Shelly Arnold dated February 7, 2004 (MW0565-MW0566)	●		●	
9	45	Email from Shelly Arnold to Paul Wiese dated July 14, 2004 (PMI 000078)	●		●	
10	46	Release Notes Mobile Workforce workSmart! Release 2.5 (MW 0557-58)	●		●	
11	47	Release Notes Mobile Workforce workSmart! Release 2.7 (MW 0386-87)	●		●	
12	48	Release Notes Mobile Workforce workSmart! Release 2.7 (MW0559-60)	●		●	

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49	Release Notes Mobile Workforce workSmart! Release 2.8 (MW0388-89)	●		●	
50	Release Notes Mobile Workforce workSmart! Release 2.9 (MW0390-91)	●		●	
51	Release Notes Mobile Workforce workSmart! Release 2.10 (MW0393-94)	●		●	
52	Release Notes Mobile Workforce workSmart! Release 3.0 (MW0395)	●		●	
53	Release Notes Mobile Workforce workSmart! Release 3.2 (MW0396-97)	●		●	
54	Release Notes Mobile Workforce workSmart! Release 3.4 (MW0398-99)	●		●	
55	Email from Tess Krimsky to Shelly Arnold dated November 5, 2004 (MW0586-87)	●			Lack of foundation; relevance; document attached is not document referenced in e-mail

NO EXHIBIT 56 PROVIDED BY PLAINTIFF

		Authenticity		Admissibility	
Exh. #	Description	Stipulation	Objection	Stipulation	Objection
57	Screenshots of handheld computers with workSmart! software (MW 0598-0742)		Lack of foundation		Relevance
58	Sales Volume Report (MW 0289-359)		Lack of foundation		Relevance
59	Summary of dollar value of total Pacific Medical sales in 2003 and 2004 using workSmart! system		Lack of foundation		
60	Pacific Medical Inventory Received print-out (MW 0573-582)		Lack of foundation		Relevance
61	User Guide for Pocket PC (MW 0516-47)	●		●	

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Exh. #	Description	Authenticity		Admissibility	
		Stipulation	Objection	Stipulation	Objection
62	User Guide Version 2.7 (MW0400-515)	●			Relevance
63	workSmart! Set-Up User Guide Version 3.1 (MW0548-52)	●			Relevance
64	How To Download E-mail to Pocket PC (MW 0553)	●			Relevance
65	Set up Active Sync (MW 554)	●			Relevance
66	e-mail December 5, 2003 re Release Notes Version 2.10 (MW 0563-64)	●			Relevance
67	e-mail December 22, 2004 re Release Notes Version 3.2 (MW 0567-68)	●		●	
68	e-mail January 25, 2005 re Release Notes Version 3.4 (MW 0569-70)	●		●	
69	e-mail December 2, 2004 Tess Krimsky to Shelly Arnold (MW 0583-85)		Lack of foundation		Relevance
70	User Guide Version 3.2.7 (MW 0147-283)	●			Relevance
71	Terms and Conditions (MW 0360-64)		Lack of foundation; relevance		Relevance

Defendant's Exhibits

Defendant reserves the right to use all exhibits offered and listed by plaintiff.

Exh. #	Description	Authenticity		Admissibility	
		Stipulation	Objection	Stipulation	Objection
100	David Weir Depo. Ex. 2; resume for David Weir				
101	David Weir Depo. Ex. 3; letter from David Weir to Jeff Leonard on 4/2/03 (MW0067-MW0071)				

1	102	David Weir Depo. Ex. 4; End-User License Agreement (EULA) (MW0366-MW0369)			
2	103	David Weir Depo. Ex. 5; email from Jeff Leonard to Matt Werner on 6/15/05 (PMI 000247-PMI 000248)			
3	104	David Weir Depo. Ex. 6; email from David Weir to Paul Wiese and Jeff Leonard on 8/6/03 (MW0075-MW0077)			
4	105	David Weir Depo. Ex. 7; email from David Weir to Paul Wiese on 8/22/03 (PMI 000242-PMI 000243)			
5	106	David Weir Depo. Ex. 8; email from David Weir to Paul Wiese on 8/22/03 (PMI 000246)			
6	107	David Weir Depo. Ex. 9; email from David Weir to Jeff Leonard and Paul Wiese on 9/2/03 (PMI 000237)			
7	108	David Weir Depo. Ex. 10; email from David Weir to Paul Wiese on 10/14/03 (PMI 000232-PMI 000234)			
8	109	David Weir Depo. Ex. 11; Hardware (with software) License and Purchase Agreement (PMI 000001-PMI 000026)			
9	110	David Weir Depo. Ex. 12; email from Jeff Leonard to Matt Werner on 6/15/05 (PMI 000178-PMI 000185)			
10	111	David Weir Depo. Ex. 13; email from Mark Hirsch to David Weir on 12/16/03 (MW0089-MW0110)			

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1	112	David Weir Depo. Ex. 14; Co-Marketing Agreement for the Total Distributor Management System (PMI 000027-PMI 000036)				
2	113	David Weir Depo. Ex. 15; email from David Weir to Jeff Leonard on 1/21/04 (MW0003-MW0004)				
3	114	David Weir Depo. Ex. 16; email from David Weir to Paul Wiese on 1/22/04 (MW0019)				
4	115	David Weir Depo. Ex. 17; email from Jeff Leonard to David Weir on 1/22/04 (PMI 000168-PMI 000169)				
5	116	David Weir Depo. Ex. 18; email from David Weir to Paul Wiese on 2/2/04 (MW0017-MW0018)				
6	117	David Weir Depo. Ex. 19; email from David Weir to Jeff Leonard on 2/4/04 (MW0005-MW0007)				
7	118	David Weir Depo. Ex. 20; email from David Weir to Paul Wiese on 2/10/04 (MW0024-MW0029)				
8	119	David Weir Depo. Ex. 21; email from David Weir to Paul Wiese on 2/10/04 (MW0010-MW0016)				
9	120	David Weir Depo. Ex. 22; email from David Weir to Paul Wiese on 4/8/04 (MW0020-MW0023)				
10	121	David Weir Depo. Ex. 23; email from Paul Wiese to David Weir on 4/8/04 (PMI 000083-PMI 000087)				
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1	122	David Weir Depo. Ex. 24; email from David Weir to John Petlansky on 4/27/04 (MW0084-MW0087)			
2	123	David Weir Depo. Ex. 25; email from Jeff Leonard to Matt Werner on 6/15/05 (PMI 000095-PMI 000096; MW0572)			
3	124	David Weir Depo. Ex. 26; Pacific Medical Meeting Minutes dated 6/2/04 (MW0036-MW0037)			
4	125	David Weir Depo. Ex. 27; email from Shelly Arnold to Rob Crichton on 2/10/06 (MW0567-MW0568)			
5	126	David Weir Depo. Ex. 28; email from Shelly Arnold to Rob Crichton on 2/10/06 (MW0569-MW0570)			
6	127	David Weir Depo. Ex. 29; Mobile Workforce, Inc. A/R Aging Detail			
7	128	David Weir Depo. Ex. 30; Check dated 12/23/03 from New Tech Leasing Company LLC to Mobile Workforce in the amount of \$111,748.03			
8	129	David Weir Depo. Ex. 31; email from Jeff Leonard to Matt Werner on 6/15/05 (PMI 000134)			
9	130	David Weir Depo. Ex. 32; email from David Weir to Paul Wiese on 2/12/04 (PMI 000137-PMI 000139)			
10	131	David Weir Depo. Ex. 33; email from Jeff Leonard to Matt Werner on 6/15/05 (PMI 000106-PMI 000107)			
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1	132	David Weir Depo. Ex. 34; email from David Weir to Jeff Leonard on 11/5/03 (PMI 000173-PMI 000177)				Relevance
2	133	David Weir Depo. Ex. 35; email from David Weir to Paul Wiese on 5/25/04 (PMI 00079-PMI 00080; MW0008-0009)				
3	134	David Weir Depo. Ex. 36; Rebuttal of Expert Opinion Report of William Beardsley by David Weir dated 1/9/06				
4	135	David Weir Depo. Ex. 38; Resume for Shelly R. Arnold				
5	136	David Weir Depo. Ex. 39; email from Shelly Arnold to announcement list-serve on 7/14/03 (MW0555-MW0556)				
6	137	David Weir Depo. Ex. 40; email from David Weir to Jeff Leonard and Paul Wiese on 9/2/03 (PMI 000237)				
7	138	David Weir Depo. Ex. 41; email from Shelly Arnold to Rob Crichton on 2/10/06 (MW0563-MW0564)				
8	139	David Weir Depo. Ex. 42; email from Shelly Arnold to Rob Crichton on 2/10/06 (MW0565-WM0566)				
9	140	David Weir Depo. Ex. 43; email from Shelly Arnold to Paul Wiese on 7/14/04 (PMI 000078)				
10	141	David Weir Depo. Ex. 44; Release Notes Mobile Workforce Worksmart! Release 2.5				

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1	142	David Weir Depo. Ex. 47; email from Jess Krimsky to Shelly Arnold on 12/2/04 (MW0583-MW0585)				
2	143	David Weir Depo. Ex. 48; product order list (MW0588)				
3	144	Paul Wiese Depo. Ex. 50; End-User License Agreement (EULA) (MW0366-MW0369)				
4	145	Paul Wiese Depo. Ex. 52; email from Jeff Leonard to Matt Werner on 6/15/05 (various Bates Nos.)		Lack of foundation		Relevance; hearsay
5	146	Jeffery Leonard Depo. Ex. 53; Check No. 30139 dated 3/26/03 from Pacific Medical, Inc. to Mobile Workforce in the amount of \$1.00 (MW0370)				
6	147	Jeffery Leonard Depo. Ex. 54; Terms and Condition of Sale (MW0360-MW0364)				
7	148	David Gamroth Depo. Ex. 1; January 2004 WorkSmarter! Newsletter				Relevance
8	149	Defendants' Motion to Vacate Default Judgment; No. CV05-5726 RBL; U. S. District Court Western District of Washington at Seattle; Xybec v. Mobile Workforce				Relevance

1 2 3 4 5 6 7 8 9 10 11	150 Declaration of David Weir in Support of Defendants' Motion to Vacate Default Judgment; No. CV05-5726 RBL; U. S. District Court Western District of Washington at Seattle; Xybec v. Mobile Workforce				
151	Resume for William R. Beardsley				
152	Expert Opinion Report by William R. Beardsley				Hearsay
153	Deposition transcript of David Weir				
154	Deposition transcript of Shelly Arnold				

VIII. ACTION BY THE COURT

- a. This case is scheduled for trial before the Court on October 25, 2006 at 9:00 a.m.
- b. Trial briefs shall be submitted to the Court on or before October 3, 2006.
- c. Proposed Findings of Fact and Conclusions of Law shall be submitted to the Court on or before October 3, 2006.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of action unless modified by a subsequent order. This order shall not be amended except by order of the Court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 24th day of October, 2006.



Karen L. Strombom
United States Magistrate Judge

1 FORM APPROVED:
2

3 KELLER ROHRBACK, L.L.P.
4

5 By _____/s/
6 Rob J. Crichton, WSBA #20471
7 Attorneys for Plaintiff Mobile Workforce, Inc.
8

9 LINDSAY, HART, NEIL & WEIGLER, LLP
10

11 By _____/s/
12 Edward T. Tylicki, WSBA #30082
13 Attorney for Defendant Pacific Medical, Inc.
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